

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

Andrew Marshall McElrath,	)	Civil Action No. 5:13-317-MGL
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	<b><u>ORDER</u></b>
	)	
Robert Stevenson, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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Plaintiff Andrew Marshall McElrath (“Plaintiff”), proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights. (Doc. # 1). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B), D.S.C., this matter was referred to United States Magistrate Judge Kaymani D. West for pre-trial handling and a Report and Recommendation (“Report”). On November 19, 2013, the Magistrate Judge issued a Report recommending that the Court grant Defendant CO Gerity’s Motion for Summary Judgement, (Doc. # 171), and dismiss Plaintiff’s Complaint *without prejudice* as against Defendant CO Gerity based upon Plaintiff’s failure to exhaust available administrative remedies. (Doc. # 280). Objections to the Report were due by December 6, 2013. Plaintiff has filed no objections to the Report.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28

U.S.C. § 636(b). In the absence of a timely filed Objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court **ACCEPTS** and incorporates the Report, (Doc. # 280), by reference into this Order. Defendant CO Gerity’s Motion for Summary Judgement is thereby **GRANTED**, (Doc. # 171), and Plaintiff’s Complaint as to Defendant CO Gerity and the March 8, 2013 hand incident is dismissed *without prejudice*.

**IT IS SO ORDERED.**

s/Mary G. Lewis  
United States District Judge

December 12, 2013  
Spartanburg, South Carolina